

United States
Circuit Court of Appeals
For the Ninth Circuit.

EMERY VALENTINE,

Appellant,

VS.

JOSEPHINE G. VALENTINE,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Division Number One.

FILED
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

JOHN H. COBB, Esq., Juneau, Alaska,
Attorney for Appellant.

H. L. FAULKNER, Esq., Juneau, Alaska, and
HENRY RODEN, Esq., Juneau, Alaska,
Attorneys for Appellee.

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Amended Complaint.

Comes now the plaintiff above named, and, leave of the Court having first been had and obtained, files this her amended complaint, and complaining of the defendant, alleges as follows:

I.

That both the plaintiff and defendant are now and have been for more than two years last past inhabitants and residents of the Territory of Alaska and of the First Judicial Division thereof, and are the owners and possessors of both real and personal property in said Territory and in said Judicial Division.

II.

That plaintiff's name, prior to her marriage to the defendant, was Josephine G. Cook. That on December 16th, 1909, plaintiff and defendant were duly married at Juneau, in the Territory of Alaska, and ever since said time have been married and occupying the relation of husband and wife.

III.

That in the month of October 1910, defendant commenced a course of cruel and inhuman treatment towards plaintiff which was calculated to and did impair the health of plaintiff and endanger her life, which said treatment of plaintiff was continued by defendant during the whole period from said month of October, 1910, until the month of October, 1915, and in this respect, plaintiff alleges: That during the said month of October, 1910, while on board the steamer [1*] "Princess Royal," upon which plaintiff and defendant had engaged passage from Juneau, Alaska, to Vancouver, B. C., defendant became intoxicated and after cursing and abusing plaintiff and using toward her vile, profane, abusive and opprobrious language, left her stateroom on said steamer and remained absent from plaintiff and refused to associate with her for the period of three days. That some time during the month of March, 1911, while defendant was intoxicated in the barroom of the Juneau Liquor Company on Front Street, Juneau, Alaska, plaintiff endeavored to induce defendant to accom-

*Page-number appearing at foot of page of original Transcript of Record.

pany her to their home, whereupon defendant cursed and reviled plaintiff in the presence of a number of men and of plaintiff's minor child, and applied to her vile, profane and abusive language, too obscene to be spread upon the records of this court. That on or about the 31st day of August, 1911, defendant left the home of plaintiff where he had been living for almost two years, and without any notice to plaintiff of his intention so to do, remained absent from said home for a period of two weeks, during all of which said period defendant was intoxicated. That on December 10th, 1914, at the jewelry store of defendant on Front Street, Juneau, Alaska, defendant assaulted plaintiff and pushed and shoved her from the counter and showcase in said store.

That on the 30th day of January, 1915, at the home of plaintiff at Juneau, Alaska, defendant, while intoxicated, assaulted plaintiff with a heavy cane and threatened to kill plaintiff; that at said time and place defendant choked, abused, and ill treated plaintiff, dragged her by the hair and forced her to leave the bed in which she was asleep with her minor child, and forced her to accompany him to another room in said home, where he uplifted a brandy bottle and threatened to strike plaintiff with the same upon the head. That during all of said period above mentioned and at divers and sundry times, too numerous to mention and therefore not alleged, at the home of plaintiff in Juneau, defendant has been guilty of extreme and repeated cruelty toward plaintiff in

this, that he has annoyed, [2] harassed and humiliated plaintiff by using profane, obscene, abusive, opprobrious and vile language toward plaintiff. That all of such cruel and inhuman conduct as herein alleged has greatly impaired the health of plaintiff and endangered her life and rendered it unsafe and impossible for plaintiff to continue to live in the same house with defendant.

Plaintiff further alleges that ever since said marriage she has conducted and demeaned herself toward the defendant as a true, faithful and affectionate wife; and that said acts of cruelty and inhumanity of defendant toward plaintiff were without the fault of the plaintiff.

IV.

That since the month of February, 1910, the defendant has become an habitual drunkard and has been habitually and grossly drunk and has contracted habitual and gross drunkenness; and has come into the home of the plaintiff in a condition of gross drunkenness and treated the plaintiff in a dangerous and threatening manner; and while in said state of gross drunkenness, used vile and opprobrious epithets toward plaintiff, all without the fault of plaintiff.

V.

That there has been no issue of the marriage between the plaintiff and defendant. That the plaintiff is the mother of one child from her previous marriage with Frank P. Cook, namely Madeline Cook, aged eleven years; and that the plaintiff is charged with the care and maintenance of the

said Madeline Cook; that the plaintiff has the custody and control of the said minor child, Madeline Cook, and the custody and control of the property of the late Frank P. Cook, deceased, to which the said Madeline Cook is the sole heir. That the plaintiff has a separate estate consisting of lot 3, block 108 in the Townsite of Juneau, Alaska, upon which there is a mortgage of \$1400.00 or thereabouts, and in which the plaintiff and defendant and said Madeline Cook have lived during the time herein referred to and since the marriage of plaintiff to defendant. That the gross and habitual drunkenness of the defendant and the acts of [3] cruel and inhuman treatment herein complained of, have been committed in the home of the plaintiff above referred to, and in the presence and immediate whereabouts of the said Madeline Cook, minor child of the plaintiff; and that the conduct of the defendant is a menace to the health and safety, not only of the plaintiff, but also to the health and security of the said minor child Madeline Cook. That the plaintiff has no property of her own, except the said lot 3 in block 108, which said property is worth approximately \$5,000.00; and plaintiff's equity in said property is approximately \$3,500.00; and that the same is necessary for the use of the plaintiff for a residence and home for herself and said minor child.

VI.

That the defendant is the owner of real estate in the Town of Juneau, Alaska, of the value of not less than \$70,000; and is the owner of personal

property of the value of not less than \$15,000, and has an income therefrom of approximately \$12,000 per annum. That the plaintiff is without funds with which to prosecute this suit and is without funds to pay for her necessary maintenance during the pendency of this suit; and that for some time prior to the filing of this complaint, the defendant has refused to pay the plaintiff's bills for her necessary clothing and has from time to time appropriated the proceeds of the rentals of the property of Madeline Cook, minor child of the plaintiff.

WHEREFORE, plaintiff prays that after the commencement of this suit, the Court or Judge thereof may provide by an order that the defendant pay, or secure to be paid to the Clerk of this court such an amount of money as may be necessary to enable the plaintiff to prosecute this action;

That upon, or after the commencement of this action, the Court or Judge thereof, provide by order for the freedom of the plaintiff from the control of the defendant during the pendency of this action and that the defendant be restrained and enjoined from visiting, or [4] entering upon the premises belonging to the plaintiff herein, to wit, lot 3, block 108, Town of Juneau, and from in any way molesting or interfering with the plaintiff and her minor child Madeline Cook.

That during the pendency of this action the Court restrain the defendant from disposing of any of the property of either party hereto.

That the marriage of the plaintiff and defendant be dissolved.

That when said marriage is dissolved the plaintiff have and recover of and from the defendant \$30,000.00 in gross for the maintenance of the plaintiff, or in the alternative, that the defendant allot the sum of \$4,000.00 per annum for her maintenance and that the trustees be appointed to collect, receive, expend, manage or invest a sufficient sum of money for such maintenance, so as to provide an income of not less than \$4,000.00 per annum for the plaintiff.

That the name of the plaintiff be changed, and that the plaintiff be allowed to resume her former name, to wit, Josephine G. Cook, and for such other and further relief as to the Court may seem meet and proper.

That the plaintiff recover her costs and disbursements herein laid out.

L. P. SHACKLEFORD,
H. L. FAULKNER,
Attorneys for Plaintiff. [5]

United States of America,
Territory of Alaska,—ss.

Josephine G. Cook Valentine, being first duly sworn, deposes and says: That she is the plaintiff named in the foregoing complaint, that she has read said complaint and knows the contents thereof; and that the facts therein stated are true and correct as she verily believes.

JOSEPHINE G. COOK VALENTINE.

Subscribed and sworn to before me this 8th day of December, 1916.

[Notary Seal]

H. L. FAULKNER,
Notary Public for Alaska.

My commission expires Nov. 14, 1918.

Service of copy of above complaint admitted this 9th day of December, 1916.

J. H. COBB,
Attorney for Defendant.

Filed in the District Court, District of Alaska,
First Division. Dec. 9, 1916. J. W. Bell, Clerk.
By _____, Deputy. [6]

In the District Court for Alaska, Division Number
One, at Juneau.

No. 1375-A.

JOSEPHINE G. VALENTINE,

Plaintiff,

vs.

EMERY VALENTINE,

Defendant.

Answer and Cross-complaint.

Now comes the defendant by his attorney, and for answer to the amended complaint herein, alleges:

I.

Defendant admits the allegations set out in paragraphs I and II of said amended complaint.

II.

Defendant denies all and singular the allegations contained in paragraphs III and IV, except as hereinafter expressly admitted, and explained.

III.

Referring to paragraph V of said amended complaint, defendant denies all and singular the allegations contained in that part of said paragraph beginning with the words, "That the gross and habitual drunkenness," on line two from the bottom of the page, to and inclusive of the words "Lot 3, in Block 108," in the fifth line from the end of said paragraph.

IV.

Referring to paragraph VI, defendant admits that he is the owner of certain real and personal property in the City of Juneau, Alaska, but denies that said property is of the value alleged, or any greater value than about \$40,000 in real estate, and \$8,000 in personal property; and he further denies that his income therefrom is \$12,000 per annum or any greater sum than about [7] \$4,000 per annum. And he denies all and singular the other and remaining allegations in said paragraph contained.

And further answering therein, by way of an affirmative answer and cross-complaint, the defendant alleges:

I.

Plaintiff and defendant intermarried at Juneau, Alaska, on December 16th, 1909, but fortunately there is no issue of said marriage.

II.

Both plaintiff and defendant had previously been married, and both had reached middle age at the time of said marriage. Both had resided in Juneau for many years, and plaintiff was fully acquainted with the defendant's habits, disposition, personality, tastes, and means.

III.

That at the time of the decease of plaintiff's former husband, Frank A. Cook, she was left practically penniless; the home was mortgaged, as was also the house and lot on Douglas Island, referred to in the amended complaint, for their then practically full value; there were other unsecured debts of said estate, aggregating a large sum, and unless plaintiff had obtained the financial aid hereinafter set out she would have been left without anything whatever from the estate of Frank A. Cook, deceased.

IV.

That shortly after the plaintiff became aware of the financial straits in which she had been left upon the decease of her former husband, she determined to seek out and use the defendant for the purpose of extricating herself from her financial difficulties. That more than a year before their marriage plaintiff solicited financial aid from the defendant, and by appealing to his sympathies she induced him to advance to her upwards of \$4,000, which was largely used for the purpose of carrying the mortgages on her home, and [8] the said property on Douglas Island. That thereafter,

and pursuant to her purpose aforesaid, plaintiff invited defendant to visit her, and deliberately set to work to gain his affections, and marry him, that as a result of her efforts in that behalf, plaintiff did gain the defendant's affections, but her own were never at any time given to the defendant, but nevertheless they were married on December 16th, 1909, as before stated.

V.

That very shortly after said marriage defendant first became aware that he had married a woman of a most imperious and tyrannical disposition; a character cold, calculating and utterly selfish; and that she was without the slightest feeling of regard or conjugal affection for him, if indeed she was capable of such a feeling at all. That nevertheless defendant set himself to the task of gaining the plaintiff's wifely affections by showing her every kindness and consideration, and especially by indulging as far as he was financially able her love of extravagance, which appeared to be the only means by which he could in any way please her. But all his efforts were unavailing, and plaintiff did not have at the time of said marriage, and never has had for defendant any such affection as she should have had before she married him; that she deliberately deceived the defendant in that respect by pretending an affection she never felt; and at the time of said marriage, and ever since, it has been the plaintiff's purpose and intention to so harass and worry the defendant, and make his life so miserable that he

would either die therefrom, or to drive him to excesses and outbursts of temper in recrimination of her cruelty, so as to give her ostensible grounds for divorce and alimony.

VI.

That pursuant to said purpose and intention, plaintiff, almost immediately after said marriage, began and has ever since maintained [9] toward defendant a course of most cruel and inhuman treatment of which her cold and calculating nature was capable and her studied ingenuity could suggest. That said conduct on the part of the plaintiff extended, with very slight intermissions, from the date of said marriage until the final separation as hereinafter set out; that defendant has from time to time remonstrated with her, begged and plead with her, and has at times been compelled to absent himself temporarily from her presence and society, but he alleges that he has never spoken a harsh word to her, or neglected her, or avoided her society, except when driven thereto by the cruel and inhuman conduct of the plaintiff, and he has never at any time mistreated her.

VII.

That among many other instances too numerous to set out, or even to recall, the following illustrate the plaintiff's general course of conduct toward defendant:

That on December 25th, 1909, nine days after their marriage, one Mrs. Jarmy, a friend and acquaintance of plaintiff, called at their home in Juneau, Alaska, and defendant shook hands with

her; that as soon as the said caller left the house, plaintiff in a most cutting, sarcastic, and insulting manner, upbraided, reviled, and abused defendant for said conduct, claiming among other things that it was insulting to her as a wife for defendant to shake hands with any other woman in her presence. That a short time later another lady of plaintiff's acquaintance called upon them, and remembering the scene narrated above, when said lady offered her hand in the usual form of greeting, defendant let drop some article he was holding and immediately stooped to recover, so as to avoid the offered handshake, without appearing to be rude. That no sooner had the said caller left, however, than plaintiff indulged another violent outburst, again reviling and abusing the defendant, and accusing him among other things of deliberately insulting her friends when they called upon her. [10] That at the time of said marriage defendant was charged with the care and custody of a stepdaughter, a girl of tender years, who was congenitally weakminded, and needed constant care and attention, and to whom defendant was deeply attached. That plaintiff was unwilling to allow said child to live in the family, and defendant procured her a home in another family in Juneau, where he could frequently see and constantly look after her welfare. That shortly after said marriage plaintiff objected to said child remaining in Juneau, claiming, among other things, that to have a child so afflicted and so connected with her husband remain in the same

town was a detriment to her social standing in the community. That in order to placate the plaintiff, and in the effort to make a happy home for plaintiff and himself, he consented to place said child in an institution, and one at Victoria, B. C., was selected.

That on or about October, 1910, he engaged passage on the steamer "Princess Royal" for himself, plaintiff, her daughter Madeline, and said child, for Victoria to place the latter in said institution, but upon reaching Victoria said institution could not receive her and he placed her in an institution in Vancouver, B. C., where she has since remained.

Defendant further shows that on said trip, and on the first evening after leaving Juneau, shortly after dinner, while plaintiff and defendant were sitting in the social hall of the steamer, a gentleman approached and said he wanted to see defendant; that defendant excused himself from plaintiff, and went to the smoking-room, remaining there till about 9 P. M., but upon returning he did not see plaintiff in the social hall, and on going to their stateroom found her undressing to retire; that she immediately turned loose upon him a tirade of the most insulting, cutting, and unseemly abuse for having left her; that defendant remonstrated with, and tried to placate her, but all to no avail; that both said [11] children were in the room at the time and became greatly excited; that upon plaintiff's demand he retired, occupying the berth with Madeline; that plaintiff con-

tinued her tirade of quarreling and abuse, and said children becoming extremely excited and restless defendant was unable to sleep or rest, and arose and dressed and spent the rest of the night in the smoking-room. That plaintiff did not quiet down until the vessel reached Vancouver, and for that reason defendant was compelled to and did stay away from her on the voyage, occupying thereafter another stateroom, all of which was rendered necessary by and due solely to the plaintiff's conduct as aforesaid.

That thereafter, in March, 1911, defendant received a message by cable to the effect that his stepdaughter in Vancouver was seriously ill, at which defendant was greatly concerned and expressed the intention of going to Vancouver to see her. That that evening at their home plaintiff indulged in an outburst of abuse, and referred to said child as "that creature," and made light of her affliction, all for the purpose, as defendant verily believes, and therefore alleges, of harassing, vexing, and worrying him.

That on the next day, while still in bad temper, plaintiff came downtown in Juneau, and seeing defendant in the storeroom of the Juneau Liquor Co. on Front Street, came in and for the purpose of humiliating him and making him an object of ridicule pretended to think defendant was drunk, and demanded that he at once go home with her, saying among other things that "Frank Cook (her former husband) always went home with her when he got drunk." That there was no cause

whatever for said conduct of plaintiff, but it was due solely to her resentment because of the defendant's expressed intention to visit his step-daughter.

That while in Seattle on said trip, Oct. 1910, defendant went to the cigar-stand in the hotel at which they were stopping and was lighting a cigar and speaking to the woman in charge of the [12] counter when plaintiff came in. No reference was made to the incident until after plaintiff and defendant returned to Juneau, shortly after which plaintiff indulged in a tirade of abuse and said among other things, "I am not going to have you lolling around talking to those women," and while still in such temper took her pillow, went and locked herself in another room and for about three months refused to sleep with defendant, eat at the same table, or even speak to him.

That on or about July 28th, 1911, plaintiff was attending the counter in his store when a woman purchased a pair of sleeve buttons for \$17.00, handing him in payment two five and a ten dollar piece; defendant placed the buttons in a small jewelry box, and handed the same with \$3.00 in change to the woman; that plaintiff entered the store during said transaction and as soon as the purchaser left began reviling and abusing the defendant, charging him with having given away said buttons and change, and demanded to see the money the woman had paid, which defendant showed her, but plaintiff refused to be placated, and went home in a fury. When defendant went home that eve-

ning he found her still in a towering rage, and she abused, vilified, and reviled defendant to the full extent of her powers and finally went off to bed in another room. On the day following plaintiff packed a trunk with defendant's clothes and toilet articles, sent it down to the house owned by defendant and which he had occupied as his home prior to said marriage, and at the same time sent defendant word that he could not come to her house any more or live with her further; that defendant thereafter stayed away from plaintiff, sleeping at his said house for about a week or ten days, when plaintiff met him on the street and she asked him for a subscription of \$25.00 to some charity for which she was soliciting; that defendant subscribed said sum, and later in the day plaintiff came to defendant's store, got said sum, and going behind the counter took a silver mesh purse from the stock and left. On the following Sunday defendant [13] returned to plaintiff's home and resumed living there but plaintiff refused to speak to him for some time thereafter.

That similar outbursts of temper, on the part of plaintiff, and similar abuse of defendant, continued with but little intermission all during 1912 and 1913. Among the many things resorted to by plaintiff to annoy defendant, plaintiff would refer to her former husband and draw comparisons between him and defendant to the great advantage of the former, and she habitually refused to speak to defendant on the streets of Juneau on

occasions when she met him and when she was accompanied by her acquaintances.

That matters reached such a state in July, 1914, that plaintiff ceased speaking to defendant at all, and has not since said date lived with him as his wife, but has occupied a separate room, and constantly avoids being in his presence.

That on or about December, 1914, plaintiff, although she had not spoken to defendant since the preceding July, came into his jewelry store in Juneau and without speaking began gathering up articles of jewelry, evidently intending to take them away; that defendant approached her, asked her what she wanted, and telling her he was there to wait on her, if there was anything she desired. Plaintiff made no answer, but threw down the articles and left the store in apparent great anger.

That plaintiff's cruel and inhuman treatment of defendant was calculated to and in fact has impaired his health, and rendered their living together longer insupportable.

VIII.

Defendant further alleges that pursuant to her purpose of aggravating and provoking defendant in some outbreak of temper, or leading him into some other conduct that would justify her in applying for a divorce and alimony, plaintiff, immediately after said marriage, and well knowing that defendant occasionally drank to excess, began systematically to ply him with liquors, and when [14] on speaking terms with him, habitually sought to get him to drink with her. That

while she failed in her main object, she in the meantime developed a craving for liquor beyond her control, and soon became addicted to habits of habitual gross drunkenness, which habit was contracted since said marriage, and has continued for more than a year next before the bringing of this suit.

IX.

Defendant further shows that since the said marriage he has supported the plaintiff in as comfortable circumstances as his means justified; that in addition thereto, and including the moneys advanced before the marriage, he had given the plaintiff money and property of upwards of fifteen thousand dollars, and she has securities obtained by him, for her, and which she could not have obtained except through his financial aid, amounting to \$15,000 more; that she has to that extent accomplished the purpose for which she married defendant, and to allow her anything more by way of alimony in instalments or as a gross sum would be for the Court to lend its aid to her in still further accomplishing said purpose.

Premises considered, defendant prays:

1st. That plaintiff take nothing by her said amended complaint, except a change of her name, to which defendant consents, and that said complaint be otherwise dismissed.

2d. That the bonds of matrimony heretofore existing between plaintiff and defendant be annulled,

set aside, and for nought held, upon the defendant's cross-complaint.

3d. For such other and further relief as the nature of the case may require.

J. H. COBB,
Attorney for the Defendant. [15]

United States of America,
Territory of Alaska,—ss.

Emery Valentine, being first duly sworn on oath, deposes and says: I am the defendant above named. The above and foregoing answer and cross-complaint is true as I verily believe.

EMERY VALENTINE.

Subscribed and sworn to before me this the 22d day of December, 1916.

[Notary Seal] E. L. COBB,
Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Service of the above and foregoing answer and cross-complaint admitted this the 23d day of Dec., 1916.

H. L. FAULKNER,
Attorney for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. Dec. 23, 1916. J. W. Bell, Clerk.
By ———, Deputy. [16]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Reply to Affirmative Answer and Cross-complaint.

Comes now the plaintiff and in reply to the affirmative answer and cross-complaint of the defendant herein, admits, denies and alleges as follows:

I.

Plaintiff admits the allegations contained in paragraph I of said cross-complaint.

II.

Plaintiff admits the allegations contained in paragraph II of said cross-complaint except that she was fully acquainted with defendant's habits, disposition, personality, tastes and means prior to their said marriage, which said allegation plaintiff denies.

III.

Plaintiff denies the allegations contained in paragraph III except that the home was mortgaged at the time of the decease of Frank A. Cook, which said allegation she admits.

IV.

Plaintiff denies the allegations contained in paragraph IV, V, VI, VII, VIII and IX of said complaint.

WHEREFORE plaintiff prays that said cross-complaint be dismissed and that she have the relief demanded in her complaint on file herein.

H. L. FAULKNER,

Attorney for Plaintiff. [17]

United States of America,
Territory of Alaska,—ss.

Josephine G. Valentine, being first duly sworn, deposes and says: That she is the plaintiff named in the foregoing reply; that she has read said reply and knows the contents thereof and that the same is true as she verily believes.

JOSEPHINE G. VALENTINE.

Subscribed and sworn to before me this 30th day of January, 1918.

[Notary Seal]

H. L. FAULKNER,

Notary Public for Alaska.

My commission expires November 14, 1918.

Copy recd. Jan. 31st, 1918.

J. H. COBB,

Atty. for Deft.

Filed in the District Court, District of Alaska,
First Division. Jan. 31, 1918. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [18]

In the District Court for the Territory of Alaska,
Division No. One, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Memorandum Opinion.

This action was brought by Josephine G. Cook Valentine against her husband, Emery Valentine, on October 23, 1915, charging the defendant with cruel and inhuman treatment calculated to impair health, and praying for a decree, dissolving the bonds of matrimony, and for alimony and other relief. The original complaint, not having been deemed sufficiently specific and certain, by order of the Court, on December 12, 1916, an amended complaint was filed, detailing with more particularity, the acts constituting the cruelty complained of, and concluding with a prayer for the same relief as in the original complaint. To this amended complaint, defendant on December 23, 1916, made answer, denying specifically the several allegations of cruelty set up in the complaint and alleging, by way of cross-complaint, certain acts of cruelty on the part of the plaintiff, constituting cruel and inhuman treatment, calculated to impair the health of defendant, and praying a dissolution

of the bonds of matrimony between the plaintiff and defendant. On January 23, 1918, the plaintiff replied to the affirmative matter of defendant's answer and cross-complaint, denying all the affirmative matter. *In limine* there was an order made by the court, directing payment of alimony *pendente lite* monthly, in the sum of \$100 a month, and also an injunction issued, restraining defendant from disposing of his realty during the pendency of the action. The temporary alimony, during the long period of inaction, up to the time of trial in December, 1921, appears to have been paid with reasonable regularity by defendant. [19]

The case came on for trial on November 26, 1921, and testimony was submitted on behalf of the contentions of either party. At the conclusion of the testimony, defendant was granted time to submit a brief and the same was filed in February, 1922.

The parties were married in Juneau, Alaska, on December 16, 1909, and have continuously resided within the Territory since the date of marriage. There are no children begotten of the union. Plaintiff is the mother of a daughter, Madeline, by a former marriage. The testimony discloses that the plaintiff, at the time of her marriage with defendant, was a widow, her former husband having died in the month of December, 1905, leaving an estate consisting of some business property in Douglas, Alaska, a house and lot in Juneau, which was the home of plaintiff, and a number of unpatented mining claims in this Divi-

sion of the Territory. The estate was quite heavily in debt and the home property, as well as that in Douglas, was encumbered with a mortgage to a local bank.

It appears that the defendant had been several times married before and twice divorced. He had for many years been a resident of Juneau, Alaska, and has been prominent in business and political circles in the city. He was a man in easy circumstances, having accumulated considerable business property, and had an assured income in rents and from his business as a jeweler.

In the year 1908, prior to his marriage with the plaintiff, defendant took over the mortgage on the home of plaintiff and the property in Douglas and has ever since held and now holds the same. He also, at a sale of the mining property of plaintiff's former husband, under an order of the probate court, in the course of the probate of the estate of the deceased husband, bought in the mining claims of the estate in his own name and has since held legal title thereto, but in November, 1913, after his marriage, he made a declaration of trust in favor of plaintiff therefor. [20]

It appears further, from the testimony, that at various times, before and after the marriage, defendant advanced small sums of money, in payment of taxes, supplies, etc., to the plaintiff, but these advances were in the nature of gifts and although stressed by defendant in his testimony, cannot have any bearing on the issues in the case. There is no issue made or tendered in the plead-

ings, or set forth in plaintiff's testimony, as to the lack of support of plaintiff by defendant; but the whole testimony discloses that the defendant was liberal, if not lavish, in his expenditures for the joint household expenses.

According to the testimony of the defendant, almost from the date of the marriage, there was unprovoked bickering, disputes and mutual misunderstanding and recrimination between plaintiff and defendant. For months at a time, according to the testimony of defendant, during their almost six years of married life, plaintiff would not speak to defendant, and, in support of his contention in regard to cruel treatment, the defendant, in his testimony, recited a number of instances of verbal upbraiding on the part of the plaintiff and also of neglect, which constituted the foundation of his cross-complaint.

The plaintiff in her testimony, while denying the testimony of defendant, charges *plaintiff* with drunkenness, with having a violent temper and testified to a number of instances wherein she was abused, not only by word of mouth, but where physical violence was offered, if not actually done, to her person. She further testified that the defendant was a periodical drunkard and at intervals indulged excessively in intoxicants to such an extent that for several days at a time he became incapacitated for business and a charge upon her. To some extent, defendant admits that he indulged in intoxicants, but says that all his life he has been accustomed to [21] their use and that

plaintiff was, or should have been aware of this fact before the marriage and that on his marriage, he resolved to abstain from such indulgence and did so until the harsh and cruel treatment of plaintiff caused him to return to his old habit.

After a careful consideration of all the testimony submitted, I am of the opinion that a divorce should be granted on the application of the plaintiff, and that defendant's cross-complaint should be dismissed. The charges and counter-charges of the conduct of one toward the other as continuing during the time they were living together during the several years prior to September, 1915; their final separation before the bringing of this action, the subdued current of animosity running through the testimony of defendant at the trial, show conclusively that the parties have lost their mutual respect and confidence necessary to even a reasonably happy conjugal relation. The plaintiff possibly may not have been entirely free from fault, but she appears to be a refined woman of a charitable disposition and during the time she was living with the defendant, was prominent in the social life as well as in the religious, charitable and other worthy activities of the community. Naturally, having such a position, she was sensitive as to the conduct of her husband. The defendant, on the other hand, was born and raised in the western states. He was proud of his independence and of his business acumen and resented any interference therewith. It seems that the greater fault lay with the husband in that he at

times prostrated his natural ability in the gratification of his appetite for drink to excess. While the defendant testified that his wife should have known this, defendant's admitted failing before the marriage, yet she testifies positively that she did not, and it is a natural sequence that, when this habit, with its consequences, was brought to her knowledge, she would complain. [22]

It has been the tendency of the later decisions of the Courts to hold that drunkenness of one spouse, long continued and at intervals, constitutes cruelty calculated to injure the health of the other. This especially in the case of a woman of a nervous or a high-strung disposition, and I am inclined to follow these decisions, especially in the face of the apparent fact that the parties herein are unable to live peaceably together.

The question of permanent alimony has given me considerable thought. The defendant has during the pendency of this suit, for nearly six years, been paying plaintiff temporary alimony at the rate of \$100 a month and, during that time, has paid out, on the order of the Court, other sums. He also voluntarily in his testimony, and through his counsel, disclaims any interest in the mining claims held in trust by him and in the mortgage indebtedness long overdue on the homestead in Juneau and the property in Douglas. This offer, which is fair under the circumstances of the case, should be accepted and made a part of any alimony awarded the plaintiff. The separate properties of plaintiff would then be unencumbered

and would consist of the home property in Juneau of the approximate value of \$5,000; the Douglas property of small value and certain unproductive, unpatented mining claims, the value of which it is difficult to estimate under the present conditions of the industry, although they were bonded for the sum of \$20,000.

The defendant's property consists of real estate and a jewelry business in Juneau, Alaska. The defendant has made an estimate, in his testimony, of its value at approximately \$48,000. The valuation of \$68,000 appears to have been placed on the real estate of defendant by the last city assessment-rolls. The present rentals from defendant's real property amount to about \$500 a month, from which should be deducted taxes, insurance and repairs, amounting to approximately \$200 a month. [23]

The plaintiff herein asks for alimony in the sum of \$25,000. This amount, as I view it, is excessive and cannot be allowed; nor am I of the opinion that alimony in any lump sum should be imposed upon the defendant at this time because of the present depressed condition of financial affairs in the community generally. A fair award to the plaintiff, in my judgment, would be that the mortgage on plaintiff's property be satisfied; that the defendant convey the property mentioned in the declaration of trust to the plaintiff and that the plaintiff have and receive as alimony the sum of \$7,500, payable in monthly installments of \$125, on or before the tenth day of each month until the

sum of \$7,500 be paid, with the option to defendant, at any time, to satisfy the judgment by paying the sum to net the plaintiff in all the sum of \$7,500 aforesaid.

Let findings and decree be prepared and submitted accordingly and let it be further provided therein that the Court retain jurisdiction of the question of alimony herein in accordance with the provisions of the statute in such case made and provided.

THOS. M. REED,
Judge.

Delivered May 13, 1922.

Filed in the District Court, District of Alaska, First Division. May 13, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [24]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 28th day of November, 1921, before the Court without a jury, and the plaintiff appearing in per-

son and by her attorneys H. L. Faulkner and Henry Roden, and the defendant appearing in person and by his attorney, J. H. Cobb; and from the evidence introduced, the Court finds the facts as follows, to wit:

I.

That plaintiff and defendant are both residents and inhabitants of the Territory of Alaska and of the First Division and have been such for more than two years preceding the commencement of this action.

II.

That plaintiff and defendant intermarried at Juneau, Alaska, on December 16, 1909, and ever since have been and are now husband and wife.

III.

That since the month of February, 1910, the defendant has become an habitual drunkard and has contracted the habit of habitual and gross drunkenness; and that during the period from February, 1910, to the present time defendant has been habitually and periodically intoxicated; and that in the month of October, 1910, defendant commenced a course of cruel and inhuman treatment toward plaintiff, which was calculated to, and which did impair the health of plaintiff [25] and endanger her life; and that said treatment was continued by defendant during the whole period from the month of October, 1910, until the date of the filing of the complaint in this action; and that said treatment consisted of assaults upon the plaintiff by the defendant and of abuse, threats and neglect,

and of the application to the plaintiff by the defendant of vile, profane and opprobrious epithets and that defendant on numerous occasions during said period reviled and abused plaintiff, and annoyed, harassed and humiliated her by the use of profane, obscene, abusive, opprobrious and vile language toward plaintiff. That all of such cruel and inhuman conduct on the part of defendant impaired the health of plaintiff and endangered her life and obliged her to seek the services and treatment of a physician; and that such conduct and such treatment of plaintiff by defendant rendered it unsafe and impossible for plaintiff to continue to live with the defendant.

IV.

That all of the conduct above mentioned, and the cruel and inhuman treatment by defendant of the plaintiff, and the habitual drunkenness were all without the fault on the part of the plaintiff and have never been condoned by the plaintiff, and that plaintiff has been without fault in said matters.

V.

That defendant has property in Juneau of the value of more than Seventy Thousand Dollars (\$70,000.00); and that plaintiff is wholly without any means of support, save rentals from an old building in Douglas, which brings her a gross income of One Hundred and Twenty Dollars (\$120.00) a year, from which has to be deducted all the costs and expenses of the upkeep of said property, including taxes and repairs; and that

said property is mortgaged to defendant, and that said mortgages are long past due, and that defendant holds a [26] mortgage upon the property of plaintiff and plaintiff's minor child, Madeline Cook, which said property consists of Lot No. 3 in Block No. 108, town of Juneau, Alaska, and Lot No. 1 in Block No. 45 of the town of Douglas, Alaska, and that defendant holds in trust for the plaintiff certain mining claims of speculative and uncertain value which are known as the Falls and Diana Lode Mining Claims, situate in the Berners Bay Mining District, Alaska, and that defendant has testified to his willingness to cancel said mortgage and to deed to the plaintiff the said mining claims.

VI.

That plaintiff's name prior to her marriage to the defendant was Josephine G. Cook.

As a conclusion of law from the foregoing facts the Court finds that plaintiff is entitled to a decree dissolving the bonds of matrimony now and heretofore existing between plaintiff and defendant and changing the name of plaintiff to Josephine G. Cook; and to the sum of Seventy-five Hundred (\$7500.00) Dollars permanent alimony for the maintenance of plaintiff payable in monthly installments of \$125.00 on or before the tenth day of each month hereafter until the full sum of Seventy-five Hundred (\$7500.00) Dollars has been paid; with the option to defendant at any time to satisfy the Judgment by paying the full sum of \$7500.00 to the plaintiff as aforesaid; and for her costs and

disbursements herein; and further that the defendant convey to the plaintiff the mining property above mentioned, to wit: The Falls and Diana patented lode mining claims and that defendant cancel and satisfy the mortgages he now holds upon Lot No. 3 in Block No. 108 of the town of Juneau, Alaska, and Lot No. 1 in Block No. 45 of the town of Douglas, Alaska; and the Court further finds that defendant's cross-complaint should be dismissed; and it is hereby ordered that a decree be entered accordingly and that the Court retain jurisdiction of the question of [27] alimony herein in accordance with the provisions of the statutes in such cases made and provided until the same has been fully paid and satisfied.

Done in open in court this 20th day of June, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska,
First Division. Jun. 21, 1922. J. H. Dunn, Clerk.
By ———, Deputy. [28]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Decree.

This matter coming on regularly for trial upon the issues made between the plaintiff and defendant, and by plaintiff's complaint and defendant's answer and cross-complaint; and plaintiff appearing in person and by her attorneys H. L. Faulkner and Henry Roden, and the defendant appearing in person and by his attorney J. H. Cobb; and the Court having heard the evidence and testimony herein, and being fully advised in the premises; and having made its findings of fact and conclusions of law herein; and the same having been duly filed with the Clerk of the above-entitled Court,—

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that the bonds of matrimony now and heretofore existing between plaintiff and defendant be, and the same are hereby dissolved; and that the name of the plaintiff be, and the same is hereby changed to Josephine G. Cook; and that the plaintiff have and recover of and from the defendant the sum of Seventy-five hundred Dollars (\$7500.00) permanent alimony, payable at the rate of One Hundred Twenty-five (\$125.00) Dollars per month on or before the tenth day of every month hereafter, and her costs and disbursements herein, and that the defendant, Emery Valentine, deed and convey to the plaintiff all the mining property which he holds in trust for the plaintiff, to wit: The Falls and Diana patented lode mining claims and that he cancel and fully satisfy the mortgages which he holds upon

plaintiff's property, to wit: Lot No. 1, Block No. 45 of the Town of Douglas, Alaska, and Lot No. 3 in Block No. 108 of the Town [29] of Juneau, Alaska; and that the cross-complaint of the defendant herein be dismissed.

And it is further ordered that the Court retain jurisdiction of the matter of the alimony herein until the same has been fully paid and satisfied.

Done in open court this 20th day of June, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Jun. 21, 1922. J. H. Dunn, Clerk.
By _____, Deputy.

Entered Court Journal No. R, page 264 [30]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. VALENTINE,

Plaintiff,

vs.

EMERY VALENTINE,

Defendant.

Assignments of Error.

Now comes the defendant above named and assigns the following errors upon which he will rely in the Appellate Court on his appeal herein, to wit: [224]

IV.

The Court erred in that part of the decree directing and commanding the defendant to deed and convey to the plaintiff the mining claims known as the Falls and Diana Lode Mining Claims.

V.

The Court erred in that part of the decree directing and commanding the defendant to cancel and fully satisfy the mortgages held by him upon Lot No. 1, in Block No. 45, of the Town of Douglas, Alaska, and Lot No. 3, in Block No. 108, in the Town of Juneau, Alaska.

And for said errors and others manifest by the record herein, defendant prays that the decree appealed from [225] be modified by striking therefrom the provision therein for permanent alimony, or any alimony, and the provisions requiring the defendant to convey the mining claims and cancel the said mortgages, and further orders as to the Court may seem proper.

J. H. COBB,

Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division. Aug. 28, 1922. John H. Dunn, Clerk. By ———, Deputy. [226]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. VALENTINE,

Plaintiff,

vs.

EMERY VALENTINE,

Defendant.

Petition for Order Allowing Appeal.

Emery Valentine, defendant above mentioned, conceiving himself aggrieved by the judgment and decree entered herein on the 20th day of June, 1922, and having filed his assignment of error, hereby prays the Court to make and enter an order allowing an appeal from said Judgment and decree to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, and to fix the amount of security to be given on said appeal to operate as a supersedeas, and that the clerk forward a complete transcript of the record herein to the clerk of the said Appellate Court.

J. H. COBB,

Attorney for Defendant.

Upon reading the above and foregoing petition for allowance of appeal:

ORDER.

IT IS ORDERED that the said appeal be, and the same is hereby allowed, and the amount of the bond to be given by the defendant to operate

as a supersedeas, is hereby fixed at the sum of \$7,500.00 *Dollars*.

Dated this the 28th day of August, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Aug. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. R, page 332. [227]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. VALENTINE,

Plaintiff,

vs.

EMERY VALENTINE,

Defendant.

Citation on Appeal.

United States of America,—ss.

The President of the United States to Josephine G. Valentine and H. L. Faulkner and Henry Roden, Her Attorneys, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ pursuant to an appeal lodged in the clerk's office for the Dis-

strict Court of Alaska, Division Number one, in the cause wherein Emery Valentine is appellant and you are appellee then and there to show cause, if any there be, why the judgment and decree in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 28th day of August, 1922, and of the Independence of the United States the one hundred and forty-ninth.

THOS. M. REED,
Judge. [228]

Service of the above and foregoing citation on appeal is admitted this the 28th day of August, 1922.

H. L. FAULKNER,
Attorney for Appellee.

Filed in the District Court, District of Alaska, First Division. Aug. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [229]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. VALENTINE,
Plaintiff,
vs.
EMERY VALENTINE,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Emery Valentine as principal and E. L. Pulver and John Reck as sureties, hereby acknowledge ourselves to be indebted and bonded to pay to Josephine G. Valentine the sum of Seventy-five Hundred (\$7500.00) Dollars, good and lawful money of the United States, for the payment of which sum, well and truly to be made, we hereby bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, however, that whereas the above-bound Emery Valentine has taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and decree rendered in said cause on the 20th day of June, 1922:

Now, if the said Emery Valentine shall prosecute his appeal to effect and pay all such damages and costs as may be awarded against him if he fail to make good his plea, then this obligation shall be null and void; otherwise to remain in full force and effect. [230]

Witness our hands this the 28th day of August, 1922.

EMERY VALENTINE.

E. L. PULVER.

JOHN RECK.

Approved as to form and sufficiency of sureties, and said bond to operate as a supersedeas from and after date of filing thereof. This the 28th day of August, 1922.

THOS. M. REED,
Judge.

O. K.—H. L. FAULKNER,
Atty. for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Aug. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [231]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. COOK VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Praeipce for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make up a transcript on appeal in the above-entitled cause, and include therein the following papers, for transmission to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Amended complaint, filed Dec. 9, 1916.
2. Answer and cross-complaint, filed Dec. 23, 1916.
3. Reply, filed Dec. 31, 1918.
4. Memorandum opinion, filed May 13, 1922.
5. Findings and conclusions, filed June 21, 1922.
6. Decree, filed June 21, 1922.
7. Bill of exceptions.
8. Assignments of error.
9. Petition of appeal and order allowing appeal.
10. Citation.
11. Bond.

Said transcript to be made up in accordance with the rules of the said Circuit Court of Appeals.

J. H. COBB,

Attorney for Emery Valentine, Defendant and Appellant.

Filed in the District Court, District of Alaska, First Division. Oct. 24, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [232]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

United States of America,
District of Alaska,
Division No. 1,—ss.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby

certify that the foregoing and hereto attached 232 pages of typewritten matter, numbered from one to 232, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, prepared in accordance with the praecipe of counsel for appellant, in cause No. 1375-A, on file in my office and made a part hereof, wherein Emery Valentine is defendant and appellant and Josephine G. Cook Valentine is plaintiff and appellee.

I further certify that said record is by virtue of an appeal and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to One Hundred Three and 05/100 Dollars (\$103.05), has been paid to me by counsel for appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 26th day of October, 1922.

[Seal]

JOHN H. DUNN,

Clerk.

By L. E. Spray,

Deputy.

[Endorsed]: No. 3943. United States Circuit Court of Appeals for the Ninth Circuit. Emery Valentine, Appellant, vs. Josephine G. Valentine, Appellee. Transcript of Record. Upon Appeal

from the United States District Court for the District of Alaska, Division Number One.

Filed November 21, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1375-A.

JOSEPHINE G. C. VALENTINE,
Plaintiff,

vs.

EMERY VALENTINE,
Defendant.

Stipulation as to Printing Transcript of Record.

It is hereby stipulated by and between counsel for plaintiff and defendant in the above-entitled and numbered cause, as follows:

1. That the facts regarding defendant's ownership of the Falls and Diana Lode Claims referred to in Assignment of Error IV are as follows: Said claims were the property of Frank A. Cook, the former husband of plaintiff, at the time of his decease. Plaintiff was the administratrix of the

estate of Frank A. Cook, deceased, and said claims were sold under an order of sale to pay certain debts of the estate held and owned by the defendant. This sale occurred subsequent to the marriage of plaintiff and defendant. At this sale the claims were bought by defendant. Subsequently defendant executed a declaration of trust, declaring he held and owned said claims, and all proceeds therefrom for the use and benefit of his wife, the plaintiff herein.

2. The facts regarding the mortgages referred to in Assignment No. V are as follows: Said mortgages were executed by the plaintiff and her former husband, Frank A. Cook, upon the home in Juneau and a business house and lot in Douglas City. Subsequent to the death of Frank A. Cook, defendant purchased said mortgages, and has ever since held the same and they are unpaid and have never been cancelled.

It is further stipulated that the Clerk of the United States Circuit Court of Appeals shall print as a part of the record, this stipulation, and shall omit from the printed record the following:

Assignments of Error Numbers I, II and III, and the entire Bill of Exceptions, or certified transcript of the testimony, the facts above stipulated being all that it is necessary for the Court to consider in passing upon assignments of error Num-

bers IV and V, which alone will be relied upon in the Appellate Court.

H. L. FAULKNER,
HENRY RODEN,
Attorneys for Plaintiff.
J. H. COBB,
Attorney for Defendant.

[Endorsed]: No. 3943. United States Circuit Court of Appeals for the Ninth Circuit. Emery Valentine vs. Josephine G. Valentine. Stipulation Re Printing Transcript of Record. Filed Nov. 27, 1922. F. D. Monckton, Clerk.

